Civil Writ Petition No.497/95
Sepoy Hukma Ram Vs.Union of India & Others
**Date of Order ::: *02/*08/05**

***Hon'ble Mr. Justice Ajay Rastogi***

Mr.R.S.Bhaduria for petitioner,
Mr.Sanjay Pareek for Union of India

By present writ petition, petitioner has sought to quash order dt.26/07/77 (Ann.20) and for allowing him service element of his pension for life with all consequential benefits.

Facts, in brief, are that petitioner was enrolled in the Army on 03/05/63 but was invalidated out of service by Medical Board under Army Rule 13(3)(ii) and accordingly he was issued discharge certificate dt.14/02/68 (Ann.1), and as a consequence whereof, disability pension was accorded from 09/02/68 to 12/01/70 vide order dt.06/06/68 (Ann.2), but it was discontinued from 19/12/71 on the premises that invalid disability was re-assessed less than 20%, against which he preferred appeal, where he was asked to report to Army Hospital, Delhi Cantt for resurvey Medical Board to reassess disability vide order dt.24/02/73 (Ann.7). The Medical Board was held at Army Hospital on 05/04/73 and it detected disease as Nummular Eczema (RSMB) vide patient discharge certificate dt.08/04/73 (Ann.8). On the basis of aforesaid report of Medical Board, vide order dt.31/07/73 (Ann.9) the respondent conveyed the decision of Government of India (dt.09/07/73) that

degree of disablement as reassessed by aforesaid Board held on 05/04/73 should be viewed as capable of improvement for one year instead of incapable as already accepted. Feeling aggrieved by aforesaid order (Ann.9), petitioner preferred appeal but the same was turned down by respondent vide order dt.11/02/74 (Ann.11), as the respondent considered disease of petitioner permanent and therefore did not consider to reinstate him. Though vide order dt.15/07/74 (Ann.12) a fresh Resurvey Medical Board was arranged for assessing degree of his disability, but vide letter dt.16/07/74 respondents conveyed that the Government of India had considered and decided that his disability being accepted at less than 20% i.e., below pensionable degree but capable of improvement, he is not entitled to any disability pension. and finally it was observed that disability being less than 20%, therefore, he is not entitled for disability pension w.e.f. 19/12/1971 as conveyed vide letter dt.10/02/75 (Ann.16). The petitioner further submitted representation for reconsideration for his disability pension claim but vide letter dt.26/07/77 (Ann.20) he was conveyed the decision of Government of India that the cause of invalidment was neither attributable to nor aggravated by military service, therefore, no disability is admissible under the Rules. Thereafter the petitioner came to know that his counter parts who were similarly placed, were granted disability pension by some orders of the

Government of India, so a notice for demand of justice through counsel (Ann.21) was served upon the respondents on 18/02/94, which remain unattended. Hence this petition.

Shri R.S.Bhaduria, Counsel for petitioner has urged that Army instruction No.04/S/75, issued by Notification dt.19/12/75 provides as under : -

> "Where an individual is invalided out of service before completion of his prescribed engagement/service limit on account of disability which is attributable to or aggravated by military service and is assessed below 20 percent, he will be granted an award equal to service element of disability pension determined in the manner given in Regulation 183 Pension Regulations for the Army, Part I (1961), read with Appendix A to AI 1/S/75. This benefit will also be allowed in all case where an individual is granted disability pension but whose degree of disablement subsequently falls below 20 percent."
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> "These orders will take effect from 1st January 1973 i.e., these will apply to all those who were on the effective strength of the Army on that date and who became non-effective thereafter."

According to him, cut off date i.e. 01/01/73 referred to in the notification is arbitrary and has no nexus with the object sought to be achieved and all who have served the Army constitute one single class and no differentia can be made so far as grant of disability and pensionable element of service is concerned and all such army personnel whose

disability has fallen below 20% prior to the cut off date are also entitled by extending benefit of disability pension, consequently denial of pension to the petitioner later by not extending such parity in no manner can be said to have any nexus and is violative of Art.14 & 21 of the Constitution of India.

Shri Bhaduria placed reliance upon decision of this Court in ***Smt.Sinokhi Vs. Union of India (2002 (3) RLR 184)*** and submitted that in the case of ***Sinokhi (supra)*** Notification dt.19/12/75 came up for consideration before this Court and cut off date 01/01/73 as referred to the Notification (supra) has been held to be arbitrary and violative of Art.14 & 16 of the Constitution of India, and the directions have been issued to the respondent for application of Army Instructions to all Army personnel regardless of the date of their retirement. Relevant part of observations made by this Court in the case of Smt. ***Sinokhi (supra)*** reads as under : -

> "10. Evidently Army Instruction No.4/S/75 dated December 19, 1975 which contain the sentence "These orders will take effect from 1st January 1973, i.e., these will apply to all those who were on the effective strength of the Army on that date and who became non-effective thereafter." was found violative of Article 14 of the Constitution and a direction was issued that the said Army Instruction shall be applicable to all army personnel covered by it regardless of

the date of their retirement."

The respondents have filed reply to writ petition. Shri Sanjay Pareek, Counsel for respondents submitted that as per provisions of Army instructions, benefit of pension has been extended to only those who have retired on 01/01/73 for which some cut off date has to be fixed.

However, it has not been disputed by Shri Pareek that self same controversy raised in present petition with regard to cut off date of 0101/73 as referred to in Notification dt.19/12/75 has been examined in the case of ***Smt.Sinokhi (supra)*** and as a consequence and in compliance thereof, benefit of pension thereafter has already been extended to concerned writ petition.

Shri Bhaduria has also informed to this Court that the judgment in the case of ***Smt.Sinokhi (supra)*** has attained finality and no appeal has been preferred against it.

In this view of the matter, in my opinion, no further adjudication with regard to cut off date is required to be examined any further in the light of decision of this Court in ***Smt.Sinokhi Vs Union of India (supra).***

Consequently, this writ petition is allowed. The respondents are directed to allow the petitioner ordinary pension in accordance with Rules

along with all other consequential benefits. Compliance of the order be made within three months. The parties shall bear their own costs.

***(Ajay Rastogi), J.***

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